(13)

No. 91-1326

In the Supreme Court of the United States

OCTOBER TERM, 1992

THE DISTRICT OF COLUMBIA AND
SHARON PRATT KELLY, MAYOR, PETITIONERS

v.

THE GREATER WASHINGTON BOARD OF TRADE

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144(a), preempts a District of Columbia statute requiring employers who sponsor health benefit plans to provide continuation coverage to employees who become eligible for workers' compensation.

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INTEREST OF THE UNITED STATES

The Secretary of Labor is primarily responsible for enforcing and administering Title I of ERISA. ERISA Section 506(b), 29 U.S.C. 1136(b). Like the District of Columbia statute at issue in this case, Title I of ERISA governs continuation coverage under health benefit plans. ERISA Sections 601 through 608, 29 U.S.C. 1161-1168. ERISA's preemption provision, Section 514(a), 29 U.S.C. 1144(a), which Congress enacted to promote the development of employee benefit plans and to assure uniform regulation of such plans, plays a central role in facilitating the Secretary's enforcement and administration of Title I of ERISA by establishing federal supremacy in this

area. The Secretary therefore has a substantial interest in the resolution of the question presented.

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of ERISA and the D.C. Code are reprinted in the appendix to this brief.

STATEMENT

1. The District of Columbia Workers' Compensation Equity Amendment Act of 1990 amended portions of the District's workers' compensation law, D.C. Code Ann. §§ 36-301 to 36-345 (1981 & Supp. 1991). The D.C. Act states that "any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this chapter." D.C. Code Ann. § 36-307(a-1)(1) (Supp. 1991). Further, the D.C. Act requires coverage for 52 weeks "at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits." D.C. Code Ann. § 36-307(a-1)(3) (Supp. 1991). The D.C. Act also provides that "an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this chapter, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers' compensation benefits." D.C. Code Ann. § 36-307(a-1)(4) (Supp. 1991).

2. The Employee Retirement Income Security Act of 1974 (ERISA) provides that the federal statute

generally governs "any employee benefit plan," ERISA § 4(a), 29 U.S.C. 1003(a), including any plan "established or * * * maintained for the purpose of providing for its participants or their beneficiaries * * * medical, surgical, or hospital care or benefits," ERISA Section 3(1), 29 U.S.C. 1002(1). Congress amended ERISA in 1986 to provide that employers sponsoring health benefit plans must offer "continuation coverage under the plan." ERISA § 601(a), 29 U.S.C. 1161(a), added by Title X, Section 10002(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. No. 99-272, 100 Stat. 227. More specifically, ERISA provides that, following a "qualifying event" that otherwise "would result in the loss of coverage," ERISA § 603, 29 U.S.C. 1163, employers must provide for at least 18 months of continuation coverage, ERISA § 602(2), 29 U.S.C. 1162(2). However, ERISA does not obligate an employer to pay the cost of continuation coverage. Instead, a health benefit plan may require a participant to pay up to "102 percent of the applicable premium for such period." ERISA § 602(3)(A), 29 U.S.C. 1163(3)(A).

Section 514(a) of ERISA, 29 U.S.C. 1144(a), broadly preempts state laws that relate to employee benefit plans covered by ERISA.[1] Section 514(a) provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section [4](a) of this title and not exempt under section [4](b) of this title." The exemption section referenced in ERISA's preemption provision states that a plan is exempt from ERISA altogether if it is "main-

[1] Under ERISA Section 3(10), 29 U.S.C. 1002(10), the term "State" includes the District of Columbia.

tained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws." § 4(b)(3), 29 U.S.C. 1003(b)(3). The preemption provision, Section 514, also saves a variety of laws from preemption.[2] None of those express exceptions applies to the D.C. law at issue here.

3. Respondent Greater Washington Board of Trade, a non-profit corporation that provides health insurance coverage to its employees, filed suit to enjoin enforcement of the D.C. Act on the ground that the Act is preempted by ERISA. Petitioners District of Columbia and Mayor Sharon Pratt Kelly moved to dismiss. Pet. App. 6. The district court granted the motion to dismiss and denied the Board of Trade's application for a preliminary injunction. *Id.* at 21a-29a.

Relying on *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983), the district court found that the D.C. Act "relate[s] to" an ERISA-covered employee benefit plan within the meaning of Section 514(a) because "benefits under the Act are set by reference to covered * * * plans." Pet. App. 22a. However, the court concluded that, under *Shaw*, a state law is not preempted if, first, it also relates to an employee

[2] ERISA's preemption provision states that it applies "[e]xcept as provided in subsection (b) of this section." Section 514(b), 29 U.S.C. 1144(b), saves from preemption state laws regulating insurance, banking, or securities; generally applicable state criminal laws; the Hawaii Prepaid Health Care Act in most respects; state laws regulating certain multiple employer welfare arrangements; qualified domestic relations orders; and certain state laws prohibiting exclusion from coverage of individuals who are provided, or eligible for, benefits or services pursuant to a plan under Title XIX of the Social Security Act.

benefit plan that is exempt from ERISA by virtue of Section 4(b)(3) and, second, an employer may provide the mandated benefits in a separately administered plan. Pet. App. 24a; see *Shaw*, 463 U.S. at 107-108. Because employers may provide the health benefits required by the D.C. Act through a separate plan covering only persons eligible for workers' compensation, the court held that the Act "falls squarely within this exemption." Pet. App. 24a. The district court thus reached the same result as the Second Circuit in *R.R. Donnelley & Sons Co.* v. *Prevost*, 915 F.2d 787 (1990), cert. denied, 111 S. Ct. 1415 (1991), with respect to the substantially identical provision of a Connecticut statute. Pet. App. 24a-25a.[3]

4. The court of appeals reversed. Pet. App. 1a-20a. It first observed that "[a] law relates to an employee benefit plan, 'in the normal sense of the phrase, if it has a connection with or reference to such a plan.'" *Id.* at 9a, quoting *Shaw*, 463 U.S. at 97; *Ingersoll-Rand Co.* v. *McClendon*, 111 S. Ct. 478, 483 (1990). "Under this broad common-sense meaning of the words," the court continued, "a state law may 'relate to' a benefit plan, and thereby be preempted, even if the law is not specifically designed to affect such plans, or the effect is only indirect." Pet. App. 9a, quoting *Ingersoll-Rand Co.* v. *McClendon*, 111 S. Ct. at 483. The court noted that the District of Columbia did "not dispute that the Equity Amend-

[3] The district court added that the Board of Trade had "suggest[ed] that the Act is preempted by the Consolidated Omnibus Budget Reconciliation Act," which added the provisions in Title I of ERISA requiring continuation coverage under group health plans. Pet. App. 29a. The court stated that "such a suggestion is not sufficient to warrant" preemption. *Ibid.*

ment Act 'relates to' an ERISA-covered employee benefit plan." Pet. App. 11a. That concession follows from the fact that "the Act 'relates to' an ERISA-covered plan by requiring that the new benefits be 'equivalent' to those already provided under an existing covered plan and by defining the employers who are obliged to provide the new benefits as those who already provide benefits under a covered plan." *Ibid.*

The court of appeals held that the district court erred by relying on the exemption for workers' compensation plans. By preempting "all laws relating to 'employee benefit plans described in section 4(a) and not exempt under section 4(b),'" the court explained, Section 514(a) "means that it is preempting all laws relating to employee benefit plans covered by ERISA." Pet. App. 13a. Thus, the fact that the D.C. Act relates to workers' compensation plans that are exempt from ERISA does not change the fact that it also relates to health benefit plans that are covered by ERISA, and hence is preempted. Similarly, the court of appeals added, "the Second Circuit focused on only half the story" in *R.R. Donnelley*. Pet. App. 15a. The Connecticut statute at issue in that case—on which "the District modelled the Equity Amendment Act," *id.* at 15a n.22—related to a plan covered by ERISA "by tying the new benefits to existing benefits and by limiting the law's applicability to employers already providing benefits through ERISA plans," *id.* at 15a.

Those factors also distinguished this case from *Shaw*, the court of appeals concluded. The New York disability law at issue in that case required employers to pay specified sick-leave benefits to pregnant employees. The D.C. Act would be comparable to the law at issue in *Shaw*, the court of appeals explained,

"had it, for example, made no reference to existing ERISA-covered plans and simply required all employers to provide specified minimum health benefits for employees receiving workers' compensation." Pet. App. 12a.

Furthermore, the court of appeals stated, "[n]ot only do the plain meaning and structure of ERISA itself require the conclusion that the Equity Amendment Act is preempted, but this result also furthers the broad purposes of ERISA preemption." Pet. App. 16a. In *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1, 11 (1987), this Court had recognized that a "patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them," and that Congress had preempted state laws relating to plans covered by ERISA for that reason. In this case, the court of appeals stated, the amount of the benefits required by the D.C. Act depends on the terms of health benefit plans covered by ERISA, so that "every time an employer considers changing the benefits under its ERISA-covered plan, it would have to consider the effect that such a change would have on its unique obligations to its District employees receiving workers' compensation." Pet. App. 17a. Thus, the court concluded, the D.C. Act "has inevitably affected the administration of an ERISA plan." Pet. App. 18a.

SUMMARY OF ARGUMENT

1. Section 514(a) of ERISA provides that the Act preempts state laws insofar as they "relate to" employee benefit plans covered by ERISA. This Court has construed "relates to" in a common-sense fashion, holding that a state law is preempted "if it has

a connection with or reference to such a plan." *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983).

The D.C. Act both refers to and has a connection with plans covered by ERISA. The D.C. Act refers to health benefit plans sponsored by private employers (which are covered by ERISA) by stating that private employers must provide health benefits "equivalent to" those offered under their ERISA plans to employees eligible for workers' compensation. D.C. Code Ann. § 36-307(a-1)(1) (Supp. 1991). The D.C. Act also has a connection with ERISA plans, as the court of appeals explained, because the fact that employers are responsible for paying benefits equivalent to those provided under their ERISA plans will inevitably affect how employers structure their ERISA plans. See Pet. App. 17a.

The conclusion that the D.C. Act "relate[s] to" ERISA plans is further confirmed by the fact that both the D.C. Act and Sections 601 through 608 of ERISA (the provisions added in 1986 by COBRA) govern continuation coverage under health benefit plans. Because Sections 601 through 608 of ERISA plainly relate to ERISA plans, so does the D.C. Act. Moreover, the terms of the laws actually impose differing requirements. Under ERISA, plans may require employees to pay up to 102% of the cost of continuation coverage. Under the D.C. Act, a plan may not enforce such a provision.

2. The D.C. Act is not saved from preemption because it also relates to workers' compensation plans, which are exempt from ERISA's coverage under Section 4(b)(3). Under Section 514(a), state laws are preempted insofar as they relate to employee benefit plans covered by ERISA. Thus, the D.C. Act is preempted insofar as it relates to private health benefit

plans, whether or not it also relates to other sorts of plans that are exempt from ERISA's coverage.

This Court's decision in *Shaw* is not to the contrary. Unlike the D.C. Act, the New York disability law at issue in *Shaw* did not tie the mandated benefits to the terms of employee benefit plans covered by ERISA. Nor did the New York law overlap with ERISA by covering the same subject matter as the federal law. The New York law's only relationship to ERISA plans was that employers could provide the benefits mandated by the state law through a separate plan that was not subject to ERISA or through a multibenefit plan that would be subject to ERISA, a relationship that was not sufficient to trigger preemption.

3. Congress adopted ERISA's broad preemption provision to clear the field so that private employers sponsoring employee benefit plans, including health benefit plans, would not be subject to overlapping regulation. *Ingersoll-Rand Co.* v. *McClendon*, 111 S. Ct. 478, 484 (1990). It would conflict with Congress's purpose in adding a broad preemption provision to ERISA, as well as with the language of Section 514(a), to hold that a private employer sponsoring a health benefit plan is subject to conflicting requirements concerning continuation coverage under the plan.

ARGUMENT

THE D.C. ACT IS PREEMPTED INSOFAR AS IT REQUIRES EMPLOYERS SPONSORING HEALTH PLANS COVERED BY ERISA TO PROVIDE CONTINUATION COVERAGE TO EMPLOYEES ELIGIBLE FOR WORKERS' COMPENSATION BENEFITS

Two features of the D.C. Act compel the conclusion that it is preempted. First, the D.C. Act ties the benefits it mandates to the terms of ERISA plans by requiring private employers to provide health benefits equivalent to those provided under plans covered by ERISA. Second, the D.C. Act actually conflicts with ERISA because both laws govern continuation coverage under health benefit plans, but in different ways.

A. The D.C. Act "Relate[s] To" Health Plans That Are Subject To ERISA By Requiring Employers Sponsoring Such Plans To Provide Continuation Coverage At The Same Benefit Level To Employees Eligible For Workers' Compensation

1. Section 514(a) states that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section [4](a) of this title and not exempt under section [4](b) of this title." As this Court has consistently held, ERISA's preemption provision "is conspicuous for its breadth." *FMC Corp.* v. *Holliday*, 111 S. Ct. 403, 407 (1990). Section 514(a) contains "deliberately expansive" language by which Congress "establish[ed] [employee benefit] plan regulation as exclusively a federal concern." *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41, 46 (1987), quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981). This Court has identified the words "relate to" as the key to ERISA's preemption clause, and has

repeatedly reaffirmed their "broad common-sense meaning." *Ingersoll-Rand Co.* v. *McClendon*, 111 S. Ct. 478, 482-483 (1990), citing *Pilot Life*, 481 U.S. at 47; see *Morales* v. *Trans World Airlines, Inc.*, No. 90-1604 (June 1, 1992). Thus, under Section 514(a), "[a] law 'relates to' an employee benefit plan," and is therefore preempted, "if it has a connection with or reference to such a plan." *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983).[4]

The "expansive sweep" of Section 514(a), *Pilot Life*, 481 U.S. at 47, extends beyond state laws "specifically designed to affect employee benefit plans." *Shaw*, 463 U.S. at 98. Congress rejected proposed language that would have preempted "only state laws dealing with the subject matters covered by ERISA—reporting, disclosure, fiduciary responsibility, and the like," in favor of the statute's broad language. *Ibid.*[5]

[4] Petitioners urge, Pet. Br. 26-27, 30, the Court to ascribe a far narrower meaning to the words "relate to." We submit, however, that it is no longer open to question whether Section 514(a) has as broad a sweep as its dictionary definition suggests. See *Morales*, slip op. 7. Moreover, petitioners' insistence on a cautious view of congressional intent, Pet. Br. 27, directly conflicts with Congress's inclusion in the statute of an express and broadly worded preemption provision. *Ingersoll-Rand*, 111 S. Ct. at 482; *Alessi*, 481 U.S. at 522.

[5] Prior to this Court's decision in *Ingersoll-Rand*, some appellate courts held that only those state laws that "purport to regulate" matters covered by ERISA are preempted. See, *e.g.*, *Hydrostorage, Inc.* v. *Northern Cal. Boilermakers Local Joint Apprenticeship Comm.*, 891 F.2d 719, 729-730 (9th Cir. 1989), cert. denied, 111 S. Ct. 72 (1990); *Rebaldo* v. *Cuomo*, 749 F.2d 133 (2d Cir. 1984), cert. denied, 472 U.S. 1008 (1985). They based that requirement on Section 514(c)(2), 29 U.S.C. 1144(c)(2) (emphasis added), which defines the term "State" to include "a State, any political subdivisions thereof, or any agency or instrumentality of either, which

Thus, Section 514(a) preempts state laws that overlap with ERISA. But Section 514(a) also preempts laws whose effect on covered plans "is only indirect" and laws "not specifically designed to affect such plans." *Ingersoll-Rand*, 111 S. Ct. at 483; *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985), citing *Alessi*, 451 U.S. at 525; accord, *Pilot Life*, 481 U.S. at 47-48. Even those laws that are consistent with ERISA are preempted insofar as they relate to covered plans. *Ibid.*; see *Morales*, slip op. 6-8; *Mackey* v. *Lanier Collections Agency & Serv., Inc.*, 486 U.S. 825, 829-830 (1988).

There are, of course, limits to ERISA's preemptive reach: "Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Shaw*, 463 U.S. at 100 n.21; see Pet. App. 10a, 19a. However, this exception has been limited to laws of general application that do not refer to employee benefit plans covered by ERISA. See *Ingersoll-Rand*, 111 S. Ct. at 483 ("generally applicable statute that makes no reference to, or indeed functions irrespective of, the existence of an ERISA plan" may escape preemption); accord, *In re Dyke*, 943

purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." This Court construed the concluding clause of Section 514(c)(2) as broadening the definition of "State" rather than narrowing the scope of preemption in *Ingersoll-Rand*, 111 S. Ct. at 484, and refused to read a "purports to regulate" requirement into Section 514(a). 111 S. Ct. at 484. Contrary to amicus AFL-CIO, Br. 24-26 n.16, we fail to see how this Court's straightforward construction of Section 514(c)(2) renders it superfluous or is otherwise contrary to established principles of statutory construction.

F.2d 1435, 1448 (5th Cir. 1991).[6] By contrast, it is well established that a state law that both refers to employee benefit plans covered by ERISA and has a connection to such plans is preempted. *FMC Corp.*, 111 S. Ct. at 408 (ERISA preempts Pennsylvania's antisubrogation law, which has "a 'reference' to benefit plans governed by ERISA" and "a 'connection'" to them); see also *Mackey*, 486 U.S. at 838 n.12 (law that "singles out ERISA plans, by express reference, for special treatment is pre-empted"); *Ingersoll-Rand*, 111 S. Ct. at 483 (ERISA preempts state law cause of action for wrongful discharge that "makes specific reference to, and indeed is premised on, the existence of a pension plan"). Such a result is necessary to achieve Congress's purpose of eliminating "a patchwork scheme of [state] regulation." *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1, 11 (1987).

2. Application of these principles leads to the conclusion that the D.C. Act "relate[s] to" plans covered by ERISA. Petitioners conceded that point in the court of appeals. See Pet. App. 11a.

a. The D.C. Act plainly references employee benefit plans covered by ERISA by mandating "health

[6] See also *Aetna Life Ins. Co.* v. *Borges*, 869 F.2d 142 (2d Cir.) (state escheat law applied to uncollected ERISA benefit checks issued by insurance company under policy guaranteeing benefits), cert. denied, 493 U.S. 811 (1989); *Firestone Tire & Rubber Co.* v. *Neusser*, 810 F.2d 550 (6th Cir. 1987) (income tax of general application applied to employee income under ERISA plans); *Sommers Drug Stores Co. Employee Profit Sharing Trust* v. *Corrigan Enters., Inc.*, 793 F.2d 1456 (5th Cir. 1986) (law imposing fiduciary duties on corporate officers for the benefit of shareholders), cert. denied, 479 U.S. 1034, 1089 (1987); *Lane* v. *Goren*, 743 F.2d 1337 (9th Cir. 1984) (state fair employment law applied to ERISA plans in their capacity as employers).

insurance coverage equivalent to the existing health insurance coverage of the employee." D.C. Code Ann. § 36-307(a-1)(1) (Supp. 1991). Thus, the D.C. Act applies only to employers providing health benefits and ties the level of benefits due under the D.C. Act to the level of benefits provided under the employer's health benefit plan.[7]

Moreover, contrary to petitioners' central claim in this Court, see Br. 12, 25-26, 31-32, the D.C. Act does not "merely * * * refer[] to benefits" under plans covered by ERISA. *Id.* at 26; see also AFL-CIO Amicus Br. 14-15. To the contrary, as the court of appeals determined, the D.C. Act has a clear connection with ERISA-covered plans, since any change in a covered plan necessarily affects an employer's "unique obligations to its District employees receiving workers' compensation" and therefore "inevitably affect[s] the administration of an ERISA plan." Pet. App. 17a-18a. Thus, the D.C. Act's indirect impact on covered plans demonstrates that the D.C. Act does not "function[] irrespective of" them. *Ingersoll-Rand*, 111 S. Ct. at 483; see *Metropolitan Life*, 471

[7] The D.C. Act applies to all employers, including some employers (*e.g.*, churches and governments) whose health plans are exempt from ERISA's coverage. See Pet. Br. 3 n.1, 23, 33; cf. 29 U.S.C. 1003(b)(1) and (2) (excluding government and church plans from coverage under ERISA). But the fact that the D.C. Act applies to a broader class of employers than does ERISA does not detract from the special treatment accorded under the D.C. Act to ERISA plans and their sponsors vis a vis other private employers that do not provide health benefits. In our view, the D.C. Act is preempted insofar as it relates to ERISA plans, but not insofar as it applies to church and government plans. That, of course, is true of all laws preempted by Section 514(a)—they are preempted only "insofar as they * * * relate to any employee benefit plan" covered by ERISA.

U.S. at 740; *Alessi*, 451 U.S. at 525; accord, *Pilot Life*, 481 U.S. at 47-48.

b. The conclusion that the D.C. Act "relate[s] to" employee benefit plans covered by ERISA is further confirmed by the fact that the D.C. Act covers the same subject matter as Sections 601 through 608 of ERISA, the provisions added by COBRA in 1986. Both the D.C. Act and ERISA now require employers to offer to provide continuation coverage under health benefit plans when an employee becomes eligible for workers' compensation. The laws adopt differing requirements, however. The provisions added to ERISA by COBRA require employers to offer continuation coverage in a broader range of cases (not just when an employee becomes eligible for workers' compensation), but Congress, unlike the District of Columbia Council, expressly permitted plans to require employees to pay the premium for continued coverage. The District has removed that option, expressly preserved by Congress, and required employers to assume the cost of health coverage. The D.C. Act accordingly seeks to make unenforceable a right conferred on plans by Congress.

A conclusion that the D.C. Act does not "relate to" ERISA plans, even though it requires employers to continue to provide health benefits to employees eligible for workers' compensation, would logically compel the conclusion that Sections 601 through 608 of ERISA do not "relate to" ERISA plans either. But by requiring employers to provide continuation coverage, Sections 601 through 608 of ERISA plainly "relate to" ERISA plans. So does the D.C. Act.

c. The fact that the D.C. Act overlaps with Sections 601 through 608 of ERISA and may affect how employers structure their ERISA plans distinguishes this case from those cases relied upon by amicus

American Association of Retired Persons, Br. 11-12, holding that ERISA does not preempt a damages remedy that takes into account the value of fringe benefits. See *Martori Bros. Distrib.* v. *James-Massengale*, 781 F.2d 1349, modified, 791 F.2d 799 (9th Cir.) (make-whole remedy for employer's bad faith bargaining, which takes into account the value of all employee benefits, is not preempted), cert. denied, 479 U.S. 949 (1986); *Jaskilka* v. *Carpenter Technology Corp.*, 757 F. Supp. 175, 178 (D. Conn. 1991) (cause of action for wrongful discharge and breach of contract, seeking damages that include the value of ERISA benefits, is not preempted); *Teper* v. *Park West Galleries, Inc.*, 427 N.W.2d 535, 541 (Mich. 1988) (claim for wrongful discharge seeking damages, including future pension benefits, is too "peripheral" to warrant preemption).

First, no provision in ERISA governs the calculation of benefits in cases arising under other statutes. Thus, unlike this case, there is no overlap between ERISA and the state laws at issue in cases like *Martori Bros.* Second, an employer is unlikely to alter the terms of its ERISA plan because, for example, an employee injured in a traffic accident will be able to recover the value of lost benefits as well as lost wages. The connection in such a case is not of the same order of magnitude as when an employer is required by state law to continue to provide benefits for a specified period of time at the level established by an ERISA plan.

d. Having receded from their prior concession that the D.C. Act relates to employee benefit plans covered by ERISA, petitioners now propose a new three-part test to determine whether a "state law should be said to 'relate to' ERISA-covered plans." Br. 26. Under the proposed test, a state law is preempted only if it

deals with the same subject matter as ERISA, affects the content or administration of ERISA plans, or conflicts with specific provisions of ERISA. *Ibid.* Whatever may be said in support of petitioners' test —and it appears flawed since it does not preempt laws that refer to ERISA plans, see *Mackey*, 486 U.S. at 830—the D.C. Act is not saved from preemption under the test. The D.C. Act and ERISA both pertain to continuation coverage under health benefit plans, and the D.C. Act affects the content and administration of ERISA plans by tying the benefits payable under the D.C. Act to the terms of such plans.[8]

B. The D.C. Act Is Not Saved From Preemption Because It "Relate[s] To" Workers' Compensation Plans, Which Are Exempt From ERISA, As Well As To Health Benefit Plans Subject To ERISA

1. As the court of appeals explained, Section 4(b)(3) of ERISA—the provision exempting plans "maintained solely for the purpose of complying with applicable workmen's compensation laws" from coverage under ERISA—does not save the D.C. Act from preemption. The D.C. Act does not purport to reach plans that are maintained solely to provide workers' compensation benefits. Instead, it applies solely to plans that were established for other purposes, since it only obligates employers to continue health coverage, and not to provide it otherwise.

The plain language of the statute accordingly precludes that application of the D.C. Act to ERISA

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[8] The third part of petitioner's test serves no purpose. A state law that conflicts with a federal law is preempted even in the absence of an express preemption provision. By preempting laws insofar as they "relate to" ERISA plans, Congress mandated preemption in the absence of any actual conflict.

plans. Section 514(a) preempts state laws insofar as they "relate to any employee benefit plan described in section [4](a) and not exempt under section [4](b)." Private health benefit plans are "employee welfare benefit plans" under Section 3(1) of ERISA, and no provision of Section 4(b) exempts such plans from coverage under ERISA. Thus, the D.C. Act is preempted insofar as it relates to health benefit plans sponsored by private employers.[9]

The conclusion that the D.C. Act is preempted is not affected by the fact that the D.C. Act also relates to workers' compensation plans, which are exempt from ERISA under Section 4(b)(3). As the AFL-CIO explains in its amicus brief at 9-10, "[t]he syntax of § 514(a) * * * makes lucid that state laws *are* preempted insofar as the laws 'relate to' ERISA employee benefit plans *not* exempt from ERISA coverage under § 4(b), whether or not the state law also relate[s] to exempt plans." Or as the court of appeals explained, the phrase "all laws relating to 'employee benefit plans described in section 4(a) and not exempt under section 4(b)'" in Section 514(a) "means that it * * * preempt[s] all laws relating to employee benefit plans covered by ERISA." Pet. App. 13a.

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[9] In arguing that the D.C. Act is saved from preemption because it is a law relating to workers' compensation, Br. 11, 20, petitioners confuse the exemptions from ERISA's coverage listed in Section 4(b) with the exceptions to preemption listed in Section 514(b). Section 4(b) exempts certain *plans* (such as those maintained solely to provide workers' compensation benefits) from ERISA's coverage. Section 514(b) excepts certain *laws* (such as those regulating insurance) from preemption. Neither provision excepts laws relating to workers' compensation from preemption, however. Such laws are preempted insofar as they relate to plans covered by ERISA.

There is no doubt that Section 4(b)(3) embodies Congress's intent to leave intact traditional state regulation of matters concerning disability benefits, workers' compensation, and unemployment, and to provide a mechanism—the option of establishing a separately administered plan—to achieve that goal. *Shaw*, 463 U.S. at 107-108. And petitioners are correct. Pet. Br. 22, in stating that Congress thereby expressed its tolerance for resulting inconsistencies in state laws of this type. At the same time, however, Congress intended Section 514(a) to eliminate as far as possible any inconsistencies relating to those areas of exclusive federal concern set forth in ERISA. *Shaw*, 463 U.S. at 99. The D.C. Act does not solely regulate workers' compensation, but intrudes upon the administration and content of ERISA-covered benefit plans.[10] Thus, the D.C. Act is preempted insofar as it relates to health benefit plans covered by ERISA, and is not saved from preemption because it also relates to exempt workers' compensation plans.

2. This Court's decision in *Shaw* is not to the contrary. The New York disability law at issue in *Shaw* required employers "to pay certain benefits to

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[10] The fact that Section 4(b)(3) defines an exempt plan as one "maintained *solely* for the purpose of complying with applicable workmen's compensation laws" (emphasis added) is significant. It evidences Congress's intent that plans that are maintained for both exempt (*i.e.*, workers' compensation) and non-exempt (*e.g.*, health benefit) purposes are covered by ERISA. See *Shaw*, 463 U.S. at 107 ("§ 4(b)(3)'s use of the word 'solely' demonstrates that the purpose of the entire plan must be to comply with an applicable disability insurance law"); accord, *Alessi*, 451 U.S. at 523 n.20. It follows that a state law that has a workers' compensation purpose, but also relates to an ERISA-covered plan maintained for another purpose, is subject to the normal operation of Section 514(a). See *Alessi*, 451 U.S. at 525.

employees unable to work because of nonoccupational injuries or illness," including pregnancy. 463 U.S. at 89. Unlike the D.C. Act, the benefits were not conditioned on participation in a plan covered by ERISA or measured by the benefits available under an ERISA plan, but instead were the lesser of $95 per week or one-half the employee's average weekly wage, for a 26-week period. *Ibid.* Nor does ERISA require the payment of benefits to persons unable to work because of nonoccupational injuries and illnesses, such as pregnancy. Thus, the only relationship between the New York law and ERISA plans was that the benefits required by the New York law could be paid, at the employer's option, through a multibenefit plan covered by ERISA. Thus, as the court of appeals explained, the D.C. Act would be comparable to the New York disability law at issue in *Shaw* if the D.C. Act, "for example, made no reference to existing ERISA-covered plans and simply required all employers to provide specified minimum health benefits for employees receiving workers' compensation." Pet. App. 12a. Whether such a statute would be preempted would then depend entirely on the question of whether there was a conflict between the statute and the continuation coverage provisions added to ERISA by COBRA.

Amicus AFL-CIO points out that the disability law at issue in *Shaw* related to employee benefit plans covered by ERISA in that employers were permitted to fulfill their obligations under the disability law through a separate plan which would be exempt from ERISA or through a multibenefit plan subject to ERISA. Br. 16. But that merely shows that an option to provide state-mandated benefits through an ERISA plan does not, by itself, establish a sufficient relationship to an ERISA plan to warrant preemption. We do not contend that the D.C. Act "relate[s] to" ERISA plans merely because D.C. employers may provide the mandated benefits through plans covered by ERISA. Rather, the D.C. Act necessarily relates to ERISA plans because: (1) the D.C. Act specifically refers to employee benefit plans covered by ERISA; (2) the D.C. Act has a connection with ERISA plans, because the D.C. Act applies to a private employer only if it sponsors an ERISA plan and, if so, the amount of the benefits payable depends on the amount payable under the ERISA plan; and (3) ERISA explicitly provides for continuation coverage under health plans, the same subject covered by the D.C. Act.[11]

C. Congress Did Not Intend To Subject Employers Sponsoring Health Benefit Plans To Overlapping Requirements

The District of Columbia has regulated benefit plans in a manner that will serve as a disincentive for employers to establish health benefit plans and will impair uniform administration across state lines. Section 514 was included in ERISA to prevent precisely such effects. As the court of appeals explained, "[b]y requiring employers to take into account the effects that any general decisions about ERISA bene-

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[11] Petitioners contend that all workers' compensation laws relate to ERISA plans because Section 3(1) of ERISA defines "employee welfare benefit plan" to include "benefits in the event of sickness, accident, disability * * * or unemployment." Br. 16. But that is not so. A plan providing such benefits that is maintained solely to comply with a workers' compensation law is not subject to ERISA under Section 4(b)(3). Thus, a law that relates only to exempt plans—such as a law that does not tie the amount of benefits under such a plan to the benefits payable under a plan that is subject to ERISA—does not relate to any ERISA plan.

fits would have on their responsibilities to their injured employees in the District of Columbia, the District has inevitably affected the administration of an ERISA plan." Pet. App. 18a.[12] Since any increase in benefits under a health benefit plan leads directly to an increase in benefits payable to employees who become eligible for workers' compensation in the District, the D.C. Act could lead "employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them." *Fort Halifax Packing Co.*, 482 U.S. at 11. But ERISA's "crowning achievement" was reserving for "Federal authority the sole power to regulate the field of employee benefit plans." 120 Cong. Rec. 29,197 (1974) (statement of Rep. Dent).

Moreover, ERISA permits employers nationwide to adopt plans that require employees to assume the cost of continuation coverage under health care plans. ERISA Section 602(3)(A), 29 U.S.C. 1162(3)(A). But the law at issue has made such terms unenforceable, since it provides that "an employer shall pay the total cost for the provision of health insurance coverage" while an employee is eligible for workers' compensation. D.C. Code Ann. § 36-307(a-1)(4) (Supp. 1991). Further, under the D.C. Act an employer must provide coverage "at the same * * * level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits." D.C. Code Ann. § 36-307(a-1)(3) (Supp. 1991). The provisions added to ERISA by COBRA, on the other hand, provide that "[i]f cover-

[12] Amicus American Association of Retired Persons, which supports petitioners, characterizes the D.C. Act as "a substantial * * * departure from existing law." Br. 7. Only Connecticut is reported to have a similar statute.

age is modified under the plan for any group of similarly situated beneficiaries, such coverage *shall* also be modified in the same manner for all individuals" receiving continuation coverage. ERISA § 602(1), 29 U.S.C. 1162(1) (emphasis added). An employer who modifies a plan to reduce benefits would accordingly confront directly conflicting requirements under the two laws. Under ERISA an employer with 20 or more employees[13] must offer continued coverage under the plan as amended. Under the D.C. Act, an employer cannot lower benefit levels pursuant to such amendments.

An example readily illustrates the conflict. Assume that a D.C. employer with 20 or more employees eliminated coverage for drug treatment, while increasing coverage for dental work. An employee who had recently become eligible for workers' compensation and otherwise would have lost coverage under the employer's health benefit plan would be entitled under ERISA to (a) continued health coverage for 18 months; (b) no coverage for drug treatment; (c) increased coverage for dental work; and (d) the employee could be required to pay the applicable premium if dictated by the terms of the plan. In contrast, under the D.C. Act, the employee would be entitled to (a) coverage for 52 weeks; (b) drug treatment, but (c) no increase in dental benefits; and (d) the employee has no obligation to contribute to the cost of the plan. An employer operating in more

[13] Section 601(b) of ERISA, 29 U.S.C. 1161(b), exempts from the continuation coverage requirements any group health plan if "all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year." The D.C. Act has no comparable exemption.

than one jurisdiction could, of course, be required to comply with other state continuation coverage laws identical neither to ERISA nor to the D.C. Act if the D.C. Act is not preempted. And an employer apparently would be subject to suits alleging deficiencies in the continuation coverage provided under its health benefit plan both under Section 502(a) of ERISA, 29 U.S.C. 1132(a), which provides "the exclusive remedy" for violations of the terms of employee benefit plans, *Ingersoll-Rand*, 111 S. Ct. at 484-486, and under state statutes providing remedies for violations of applicable state continuation coverage laws.

This example clearly illustrates that the D.C. Act cannot be sustained under Section 514(a). That provision "was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefit law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government." *Ingersoll-Rand*, 111 S. Ct. at 484. It would be contrary to Congress's purpose in enacting Section 514(a) to require employers to comply both with ERISA's continuation coverage requirements and with continuation coverage requirements adopted by the States.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

Section 3(1) of ERISA, 29 U.S.C. 1002(1), provides:

The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

Section 4 of ERISA, 29 U.S.C. 1003, provides in pertinent part:

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this subchapter shall not apply to any employee benefit plan if—

* * * * *

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

* * * * *

Section 514(a) of ERISA, 29 U.S.C. 1144(a), provides in pertinent part:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

Section 601 of ERISA, 29 U.S.C. 1161, provides:

(a) In General

The plan sponsor of each group health plan shall provide, in accordance with this part, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

(b) Exception for certain plans

Subsection (a) of this section shall not apply to any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year.

Section 602 of ERISA, 29 U.S.C. 1162, provides in pertinent part:

For purposes of section 1161 of this title, the term "continuation coverage" means coverage under the plan which meets the following requirements:

(1) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.

(2) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(A) Maximum required period

(i) General rule for termination and reduced hours

In the case of a qualifying event described in section 1163(2) of this title, except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

* * * * *

(3) **Premium requirements**

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

* * * * *

Section 603 of ERISA, 29 U.S.C. 1163, provides in pertinent part:

For purposes of this part, the term "qualifying event" means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this part, would result in the loss of coverage of a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(3) The divorce or legal separation of the covered employee from the employee's spouse.

(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]

(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(6) A proceeding in a case under Title 11, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

* * * * *

D.C. Code Ann. § 36-307 (Supp. 1991) provides in pertinent part:

(a-1)(1) Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this chaper.

(2) For purposes of this subsection, the phrase "eligible to receive" means:

(A) An employee is away from work due to a job-related injury for which the employee has filed a claim for workers' compensation benefits under this chapter; or

(B) An employer has knowledge of a job-related injury of an employee who is away from work due to the job-related injury pursuant to which workers' compensation benefits may become due under § 36-315.

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

(4) Except as provided in paragraph (3) of this subsection, an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this chapter, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers' compensation benefits.

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